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November 16, 2006

Chairman Michael McGowan  
Commissioners, Delta Protection Commission  
Linda Fiack, Executive Director  
Delta Protection Commission  
14215 River Road  
Walnut Grove, CA 95690

RE: Appeals of Decision of Yolo County's Approval of Old Sugar Mill Specific Plan, Hearing  
November 16, 2006, 6:30 p.m.

RESPONSE of Concerns Citizens of Clarksburg to Letters filed on behalf of County and  
Project Applicant ("Applicant")

Dear Chairman McGowan, Commissioners, and Ms. Fiack,

Appellant concurs with the excellent analysis by the Attorney General, November 7, 2006, and urges that the Commission adopt his recommendation. The following responds to the letters filed by James Moose, Attorney, for Yolo County ("County") and Timothy Taron, Attorney for the project applicant ("Applicant"), dated November 13 and 14, 2006, respectively. County and Applicant concede that the appeals raise issues appealable under the DPA. This letter is submitted at hearing under authority of CFR 20010(b) and (f) (Commission hearing procedures.).

**The Project Site is in the Primary Zone of the Delta**

County and Applicant argue that certain language in Public Resource Code § 29728 excludes unincorporated communities within the Primary Zone. However the legislature included a provision in § 29728 to resolve any questions about the Primary Zone boundary:

"The precise boundary lines of the primary zone includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the State Lands Commission."<sup>1</sup>

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<sup>1</sup> The Attorney General's Memorandum to the Commission dated, November 30, 1994, stated that the legislature can change the Map of Zones by a simple amendment to the DPA. Yolo has not sought such an amendment. (Attach. C of the Attorney General Recommendation, November 7, 2006)

Furthermore, Public Resources Code §29760(a) requires that the map of the Primary Zone be a part of the Resource Management Plan "for land uses within the primary zone of the Delta."

More evidence of the legislature's intent to include the unincorporated delta communities as part of the Primary Zone is found in Public Resources Code §29723, which defines "development" for purposes of the Act. Section 29723(b)(9) excludes from the definition of "development" the following

"(9) Construction, reconstruction, demolition, and land divisions within existing zoning entitlements and development within or adjacent to the unincorporated towns of the delta, as permitted in the Delta Area Community Plan of Sacramento County and the general plan of Yolo County, authorized prior to January 1, 1992."

Projects which are "development" are subject to § 29753.5 which pertains to activities permissible under local general plan amendments required to conform to the Resource Management Plan for the Primary Zone, and § 29765, governing development in the Primary Zone prior to Commission approval of the local general plan amendments.

There was no reason for the legislature to include the unincorporated delta towns within §29723(b)(9) if the legislature had intended them to be part of the Secondary Zone. Indeed, §29723(b)(9) leaves the unincorporated delta towns communities subject to the requirements of §§29753.5 and 29765, and the Resource Management Plan, except for the "grandfather" exemption of §29723(b)(9)). This is conclusive evidence of the legislature's intention to include these unincorporated communities as part of the Primary Zone.

Attached as **EXHIBIT A** is page 15 of the Land Use and Resource Management Plan for the Primary Zone of the Delta, adopted February 23, 1995, which explicitly states that Clarksburg was in the Primary Zone:

"One incorporated city, Isleton and portions of Stockton, Rio Vista, and Pittsburg, exist in the Secondary Zone. Unincorporated communities lie along the Sacramento River in the Primary Zone including: Clarksburg, Courtland, Hood, Locke, Walnut Grove, and Ryde." (Emphasis added.)

The letters and exhibits of County and Applicant repeatedly mention "spheres of influence." However Clarksburg is not within any sphere of influence.<sup>2</sup>

County and Applicant cite a letter to Yolo County, dated April 18, 1994, by the former DPC Executive Director, which include a map that County and Applicant contend shows Clarksburg as outside of the Primary Zone. The boundaries depicted on that map appear to be hand-drawn and, as to Clarksburg, are inconsistent with the Map of Zones on file with the Secretary of State.

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<sup>2</sup> County's letter, p 6, contends that a Senator Johnson's summary of the DPA bill, March 6, 1992, supports the conclusion that unincorporated towns were excluded from the Primary Zone. In fact, Senator Johnson's bill summary does not mention unincorporated communities. (Exhibit A of County's letter.)

An error by staff does not override legislation. The Memorandum of the Attorney General, November 30, 1994, *supra*, resolved that issue. The Attorney General then stated that ". . . over the past two years, various discrepancies have arisen in determining which specific parcels are inside or outside the primary zone" and explained why the "the commission is required to rely specifically on the boundary lines shown on the Delta Protection Zones map currently on file with the secretary of state." The Attorney General's Memorandum of November 1994, *supra*, was addressed and distributed to the Commission, including, presumably, the Supervisor representing Yolo County.

The Map of Zones filed with the Secretary of State does not show Clarksburg as excluded from the Primary Zone. By contrast, the City of Isleton was excluded, and the map shows the area of Isleton as part of the Secondary Zone.

The arguments of County and Applicant that the Specific Plan is "development" authorized prior to January 1, 1992, is not supported by the DPA's detailed definition of "development", Public Res Code §29723(a), nor is it permissible under the County's land use designation on January 1, 1992. County's unsupported arguments regarding constitutionality of the DPA and the *Rosscoe* decision will be addressed by counsel for NRDC.

### **Since November 30, 1994 Yolo County Has Known, or Should Have Known, That The Clarksburg In The Primary Zone**

While there may have been misunderstanding immediately after passage of the Act, the Attorney General's Memorandum, November 30, 1994, clarified that the Map of Zones filed with the Secretary of State defines the precise boundaries of the Primary Zone.

County's letter, p. 9, mistakenly says that "County did not learn of the change until November 2004." In fact, the Attorney General's November 30, 1994 Memorandum was presumably distributed to all Commissioners, including the Yolo County Supervisor appointed by the Yolo County Board of Supervisors under Public Res. Code §29735. The Commission's letter commenting on the NOP for the Specific Plan, dated March 19, 2003, by its Director, states the Clarksburg is in the Primary Zone. Although Yolo has been represented on the Commission by very capable and knowledgeable Supervisors for its entire history, Yolo has not disputed the map or the Attorney General's 1994 Memorandum, until it released RDEIR in November 2005.

Attached as Exhibit E to County's letter, November 13, 2006, is the County's staff report to the Yolo County Supervisors for Consideration of General Plan amendments to integrate the Land Use and Management Plan within the Yolo County General Plan, March 18, 1997. Attachments A and B of that County staff report are the maps of the "Primary and Secondary Zone," and the "Primary Zone Map within Yolo County," both of which plainly show Clarksburg as part of the Primary Zone, particularly Attachment B (Primary Zone Map Within Yolo County).

The General Plan amendment adopted by the Board of Supervisors on March 18, 1997, states:

"The Land Use and Resource Management Plan for the Primary Zone of the Delta adopted by the Delta Protection Commission is incorporated herein by reference and shall

apply to those areas designated within such Plan." (emphasis added.) (See County letter, Exhibit E, Attachment D.)

"Those areas designated within such Plan" are shown on the Primary Zone Map included in the Resource Management Plan, and includes Clarksburg. Moreover, the Plan, page 15, states:

"Unincorporated communities lie along the Sacramento River in the Primary Zone including: Clarksburg, Courtland, Hood, Locke, Walnut Grove, and Ryde." (Emphasis added.) See attached **EXHIBIT A**.

Nowhere does the Resource Management Plan exclude Clarksburg from the Primary Zone.

Moreover Attachment 3 of County's Exhibit D, Planning Commission Minutes, contains the following:

"Commissioner Gray asked if residents of Clarksburg could appeal actions to the Delta Protection Commission. It was answered yes by Director Jenkins."

County's letter correctly states that page 25 of the 2001 Clarksburg General Plan states that the general plan area "is also located in the primary zone of the Sacramento-San Joaquin Delta." (Attached **EXHIBIT B**.) Significantly, the Clarksburg General Plan does not state that any portion of the general plan area is excluded from the Primary Zone, even though most of the 2001 Clarksburg General Plan addresses land use within the town area.

### **Errata**

Page 9 of Appellant's appeal letter, by James Pachl, November 3, 2006, states that division of large agricultural parcels into smaller agriculture-residential parcels is not prohibited by the DPA or the Resource Management Plan. In fact, rezoning to allow such divisions may, in some circumstances, be inconsistent with Land Use Policy P-2.

### **Conclusion**

For the reasons stated above and in the Attorney General's Recommendation and the appeals filed herein, the Concerned Citizens of Clarksburg and associated individual appellants request the Commission to set aside Yolo County's approval of the Old Sugar Mill Specific Plan and related approvals, and remand the project to Yolo County for reconsideration in accordance with the Delta Protection Act and Resource Management Plan.

Respectfully submitted,

James P. Pachl